IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.1611 OF 2005
IN
APPEAL (LODGING) NO.346 OF 2005
IN
NOTICE OF MOTION NO.2200 OF 2001
IN
SUIT NO.3168 OF 2001

ALONG WITH

APPEAL (LODGING) NO.346 OF 2005

Shri Babulnath Navyuvak Ganesotsav Samiti & ors. — Applicants

vs.

Nitin Gordhanbhai Thakkar & ors. — Respondents

Mr.A.D.Shetty for the appellants-applicants.

Mr.A.Y.Bookwala with Mr.Jariwala i/b. M/s.Thakore Jariwala & Co. for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th June 2005

P.C.

We heard Mr.A.D.Shetty, the learned counsel for the appellants-applicants on the notice of motion seeking condonation of delay.

2. The appellants have preferred the appeal aggrieved by the order dated 15th January 2004 passed by the learned motion Judge in Notice of Motion No.2200/2001 in

Suit No.3168 of 2001. The appeal suffers from delay of more than a year. In the affidavit in support of notice of motion seeking condonation of delay, it is stated that the appellants did not feel the necessity of challenging the order dated 15th January 2004 initially. Later on the necessity to challenge the order dated 15th January 2004 arose because the respondents have preferred the appeal against the order dated 22nd June 2004. We are afraid, the cause shown in the affidavit in support of notice of motion is no cause much less sufficient cause. The filing of appeal by the present respondents against the order dated 22nd June 2004 could not have been a ground for filing the appeal by the present appellants against the order dated 15th January 2004. Aggrieved by the order dated 15th January 2004, if the appellants intended to prefer the appeal, they ought to have done so within time. However, the fact is that the appellants decided not to challenge the order dated 15th January 2004 and it is only when the respondents have preferred the appeal against the order dated 22nd June 2004 the present appeal has been preferred against the order dated 15th January 2004 as a pressure tactics.

3. The long delay of more than a year is not sufficiently explained.

4. Notice of motion for condonation of delay is dismissed.

5. Since the appeal is barred by time and the notice of motion for condonation of delay has been dismissed, the appeal is liable to be dismissed as time barred and we order accordingly.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)